THE HON'BE SMT. JUSTICE M.G.PRIYADARSINI

MA.CMA.NO.2196 OF 2014

JUDGMENT

Assailing the order and decree dated 23.01.2014 passed by the Chairman, Motor Accident Claims Tribunal (District Judge)at Nizamabad in O.P.No.580 of 2010, the Insurance Company file the present appeal.

2. Heard Sri A.Ramakrishna Reddy, learned counsel for the appellant – insurance company, who mainly contends that there is no seating provision on the tractor, except for the driver, but the claimant along with another traveled by sitting on the mudguard of the tractor and this clearly shows that there is violation of the terms and conditions of the policy Ex.B-1, and hence the insurance company cannot be made liable to pay the compensation. He further contended that the amounts awarded by the Tribunal under different heads are excessive. With these contentions, he sought to set aside the impugned order.

3. On the other hand Sri M.Hamsaraj, learned counsel for the respondent – claimant supporting the impugned order sought for dismissal of the appeal.

4. The case of the claimant is that on 4.6.2010 at 9.30 a.m., he along with another person was attending work on Tractor bearing No. AP 25 M 5096 under Upadi Hami Pathakam at D-50 canal in the Shivar of Abhangapatnam village of Nizamabad District. At that time, the driver of the tractor drove the vehicle in a rash and negligent manner and in high speed, due to which the front tyre of the tractor detached and it fell in the canal and the tractor fell on him, due to which, he suffered injuries on legs and other parts of the body. The hot diesel fell on his body and he sustained burn injuries. He took treatment in Government Hospital, Nizamabad, Pragathi Hospital, Nizamabd, Gandhi Hospital, Secunderabad and with other private doctors.

5. The Tribunal considering the evidence of P.W.1, and Exs.A-8 and A-13, which are the certified copies of FIR and charge sheet, and as no rebuttal evidence was led by the respondents in this regard, the Tribunal concluded that the accident occurred due to rash and negligent driving of the driver of the tractor and that the claimant sustained injuries in the said accident. The appellant – insurance company also did not dispute this finding, and it disputed only its liability and the quantum.

6. The Tribunal has examined the policy Ex.B-1, where-under the sub-heading "Limitations as to use" was mentioned, and a reading of the said clause shows that the vehicle can be used only for agricultural and forestry purposes. Based on the evidence on record the Tribunal found that the claimant was engaged to load and unload mud in the tractor from the village tank to agricultural lands. So it is clear that the claimant is engaged as a labourer and not as a passenger and the activity that is undertaken with the tractor at the time of accident was only agricultural activity. In these circumstances, the Tribunal found that the claimant is a third party and that the insurance company cannot escape its liability and accordingly held that it is liable to pay compensation. I do not find any reason to interfere with the said finding of the Tribunal.

7. With regard to quantum, it could be seen that the claimant filed Ex.A-7 would certificate which shows that he sustained burns on the neck and shoulder to an extent of 10 to 15% and that he is unable to move left and right leg and he also received abrasion over the right cheek. The claimant also got examined the doctor who issued disability certificate. P.W.2 is the doctor and he is the member of the Medical Board, Nizamabd and on 17.9.2012 he examined the claimant and issued Ex.A-12 disability certificate, which shows that the claimant sustained 50% disability. But

however, in his cross-examination P.W.2 admitted that the 50%disablity is a temporary disability. Further, the case of the claimant is that after the accident, he was treated at Government Hospital, Nizamabad, Pragathi Hospital, Nizamabad and Gandhi Hospital, Secunderabad, and he filed Ex.A-6 photograph which shows that he sustained burn injuries on the right shoulder and hands. Even though he filed medical bills, failed to examine the doctor who treated him. Therefore, in these circumstances, considering the nature of injuries and the evidence on record, the Tribunal awarded an amount of Rs.1,25,000/- towards injuries and pain and suffering, Rs.20,000/- towards medical expenses and Rs.20,000/- towards transportation charges and extra nourishment. As the claimant suffered fracture of leg and that he may not have worked for at least one year, the Tribunal taking his income as Rs.3,000/- per month, awarded an amount of Rs.36,000/- towards loss of earnings. Thus, in all, awarded an amount of Rs.2,01,2000/- with interest at the rate of 7.5 per cent per annum from the date of the claim petition till the date of realization and made both the insured and well as the insurer of the tractor jointly and severally liable to pay the compensation. No contra evidence is pointed out by the counsel for the appellant to interfere with the order of the Tribunal.

8. For the foregoing reasons I do not find any reason to interfere with the impugned order of the Tribunal and the appeal is devoid of any merits and the same is accordingly dismissed.

9. Interlocutory Applications pending, if any, shall stand closed. No order as to costs.

M.G.PRIYADARSINI,J

DATE:05—09—2022
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